

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

RECEIVED

JUL 27 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Pay Telephone
Reclassification and Compensation Provisions
of the Telecommunications Act of 1996

CC Docket No. 96-128

**REPLY COMMENTS OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION
ON ISSUES IN THE SECOND REMAND**

Consistent with the concerns raised in its initial comments in this remand proceeding, the Personal Communications Industry Association ("PCIA") endorses the comments advocating a cost-based approach to payphone compensation, especially given that the Commission remains ambivalent with respect to the only true market-based strategy—caller pays.¹ The comments filed in this second remand provide substantial support for a cost-based approach to payphone compensation and further underscore why the Commission must abandon the market-surrogate approach adopted in the *Second Report & Order*² and roundly criticized by the D.C. Circuit.³

-
- ¹ See "Furchtgott-Roth: FCC must set pay phone compensation," *Telecommunications Reports*, at 49 (July 20, 1998) (quoting FCC Commissioner Harold Furchtgott-Roth as saying that while he would prefer that the marketplace set "dial around" and toll-free call compensation rates, "It's necessary for the FCC to set some kind of compensation rate.").
- ² *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Second Report & Order*, 13 FCC Rcd. 1778 (1997) ("*Second Report & Order*").
- ³ *MCI Telecommunications Corp. v. FCC*, 1998 U.S. App. LEXIS 9765, at *6-8 (D.C. Cir. 1998) ("*MCF*").

Part I of these comments argues that the information in the record supports proposals for a cost-based approach to payphone compensation. Part II explains why the Commission's current payphone compensation scheme harms the poorest segments of the market. Part III argues that in considering a caller pays option within a carrier pays framework, the Commission should consolidate with this proceeding the AirTouch Paging petition for rulemaking to establish a separate 8XX code or block of numbers for toll-free calls from payphones.

I. PCIA Supports the Cost-Based Approach Advocated By Many Commenters

Consistent with the concerns detailed in its initial comments,⁴ PCIA endorses the cost-based approach advocated by many other commenters in this proceeding.⁵ To sustain the Commission's current payphone compensation scheme, the Court required that the Commission demonstrate (1) that costs and compensation rate for toll-free calls converge, and (2) that similarities between the markets for coin and coinless calls justify the use of the local coin rate as

⁴ See Comments of the Personal Communications Industry Ass'n on Issues in the Second Remand, CC Docket No. 96-128 (July 13, 1998) ("PCIA Second Remand Comments").

⁵ See Comments of AT&T Corporation, CC Docket No. 96-128, at 15-17 (July 13, 1998); Comments of Cable & Wireless, Inc., CC Docket No. 96-128, at 9-10 (July 13, 1998); Comments of the Competitive Telecommunications Ass'n, CC Docket No. 96-128, at 18-19 (July 13, 1998); Comments of the Consumer-Business Coalition for Fair Payphone 800 Fees, CC Docket No. 96-128, at 7-10 (July 13, 1998); Comments of Excel Communications, Inc., CC Docket No. 96-128, at 9-12 (July 13, 1998); Comments of Frontier Corp., CC Docket No. 96-128, at 8-9 (July 13, 1998); Comments of IXC Communications Services, Inc., CC Docket No. 96-128, at 3 (July 13, 1998); Comments of LCI International Telecom Corp., CC Docket No. 96-128, at 8-10 (July 13, 1998); Comments of MCI Telecommunications Corp., CC Docket No. 96-128, at 4-8 (July 13, 1998); Comments of Paging Network, Inc., CC Docket No. 96-128, at 10-13 (July 13, 1998); Comments of Sprint Corp., CC Docket No. 96-128, at 15-17 (July 13, 1998); Comments of the Telecommunications Resellers Ass'n, CC

[Footnote continued on next page]

a starting point for construction of a market surrogate.⁶ Given that the market surrogate scheme cannot satisfy the Court's mandate, the Commission must abandon it.

First, the markets for coin and coinless calls are different under a carrier pays regime because the buyers and sellers are different for coin and coinless calls. For coin calls, the caller is the buyer and the payphone service provider ("PSP") is the seller, whereas for coinless calls in a carrier pays system, the interexchange carrier ("IXC") is the buyer and the PSP is the seller.⁷ Furthermore, in the local coin market, the buyer buys an end-to-end call, whereas in the coinless market, the buyer buys an input for dial-around operator services and subscriber 800 services.⁸ Finally, in a market-based carrier pays system, a caller making a coinless call is not directly responsible for the payphone compensation obligations incurred with payphone use, giving the caller little incentive to price-shop for payphone service. Given these facts, it is illogical for the Commission to conclude that the coin rate—presently a default rate of \$0.35 per call—should serve as the starting point for market surrogate for a compensation rate in an entirely separate market.

Second, the costs of toll-free payphone services do not converge with the compensation rate under the Commission's market surrogate scheme. The cost information in the record—including recent and previously submitted information—continues to undermine the

[Footnote continued from previous page]

Docket No. 96-128, at 7-9 (July 13, 1998); Joint Comments of Vocall Communications Corp. and Galaxy Long Distance, CC Docket No. 96-128, at 6-7 (July 13, 1998).

⁶ MCI, 1998 U.S. App. LEXIS 9765, at *6-7.

⁷ See, e.g., AT&T Comments, at 8-9.

⁸ *Id.* at 9.

Commission's existing market surrogate scheme by showing that the compensation rate far exceeds the cost of toll-free payphone services. In addition to information already submitted or alluded to regarding the costs of payphone service for SBC, Sprint, and Bell Atlantic,⁹ MCI has taken a fresh look at the costs of payphone service by creating a model payphone business and analyzing its costs.¹⁰ Granted, the MCI study is not based on MCI's actual experience in operating a payphone business. But MCI's approach reflects the reality that neither the IXC's nor end users—such as paging carriers—can obtain this information except through the PSPs. MCI's study is nevertheless valuable in assessing the costs of both coin and coinless calls, which it demonstrates to range between \$0.11 and \$0.16 and \$0.08 and \$0.12 respectively.¹¹ With the other data in the record, the MCI study highlights the considerable gap between payphone service costs and the Commission's market surrogate compensation rate.

If costs and rates truly converged, then the objections of certain PSPs to a cost-based approach would be largely academic. As the cost information in the record demonstrates,

⁹ See AT&T Petition for Reconsideration, CC Docket No. 96-128 (Dec. 1, 1997) (attaching Southwestern Bell Telephone Co.'s 1994 analysis of the revenues, expenses, assets, operating statistics, and other results and projections for its payphone business); Reply Comments of Sprint Corporation on Remand Issues, CC Docket No. 96-128, exh. 1 (Sept. 9, 1997) (analyzing local exchange carrier ("LEC") payphone costs and estimating a per-call cost of 6 cents); Sprint Corporation's Comments on Remand Issues, CC Docket No. 96-128, attach. A (Aug. 26 1997) (attaching the Massachusetts Department of Public Utilities' April 14, 1996, order, which cites payphone cost data of New England Telephone).

¹⁰ MCI Comments, exh. 2.

¹¹ MCI Comments, at 7. The fact that MCI may or may not have included particular costs as line items in its study should in no way undermine the impact of its study, which generally demonstrates that particular costs are much lower than the PSPs have represented.

however, costs and rates do not converge. It is therefore understandable that the PSPs would continue to support the market-surrogate method that provides them with monopoly rents.

While it is far from clear that the record currently contains all of the cost data for the Commission to construct the best possible cost-based payphone compensation system,¹² the Commission does presently possess a significant amount of useful cost data that could be used to construct a cost-based model. Given the legal infirmities of the Commission's existing market surrogate scheme, the Commission should proceed to develop a cost-based payphone compensation system.

II. The Commission Has Failed to Consider the Impact of Its Current Payphone Compensation System on the Poorest Segments of the Population

The Commission's current payphone compensation system limits access to telecommunications services by the poorest segments of the population. The current carrier pays system—with its excessively high rates and reliance on call blocking as a competitive lever—causes significant harm to those who can least afford telecommunications services.

Low-income persons rely on toll-free 800 services in a variety of ways. Citicorp and the State of Rhode Island noted that many persons depend on toll-free 800 services to obtain welfare

¹² The LEC-owned PSPs in particular have yet to submit comprehensive cost data. Indeed, they have even failed to supply such data to support their own assumptions regarding their preferred avoided cost methodology. *See, e.g.*, Comments of the RBOC/GTE/SNET Coalition, CC Docket No. 96-128 (July 13, 1998).

and other benefits.¹³ Yet many low-income persons also use toll-free 800 services in conjunction with pagers as their sole means of telecommunications, rather than subscribing for residential local and long-distance services. The Commission's current market surrogate scheme, however, threatens the use of telecommunications services by low-income persons through the use of call blocking. The Commission has presumed that call blocking will serve to place competitive pressure on the compensation rates negotiated between PSPs and IXC's both during and after the default rate period. But call blocking ensures that those persons depending on subscriber 800 services to retrieve messages may not be able to do so at all.

To remedy these shortcomings, the Commission should at least provide for a caller pays option within the carrier pays framework in order to ensure access to telecommunications services by the poor. Given that Congress has mandated per-call compensation in Section 276 of the Communications Act of 1934, as amended, the Commission should strive to ensure access to payphone services at the lowest justifiable rate, rather than artificially limit access to those services in the hope that doing so will indirectly enhance competition.¹⁴

¹³ Comments of Citicorp Services, Inc., CC Docket No. 96-128, at 1-3 (July 13, 1998); Comments of the Rhode Island Department of Human Services, CC Docket No. 96-128, at 1-2 (July 13, 1998).

¹⁴ Citicorp suggests that the Commission compensate PSPs for coinless calls by increasing the compensation amount for coin calls, and that it treat commercial and noncommercial calls differently. Citicorp Comments, at 5. Such cross-subsidization, however, would likely violate the per-call compensation requirement of Section 276. *See* 47 U.S.C. § 276.

III. The Commission Should Consolidate the AirTouch Paging Petition for Rulemaking with This Proceeding

In considering a caller pays option within the framework of a carrier pays system, the Commission must address AirTouch Paging's proposal for a separate 8XX code or block of numbers for toll-free calls from payphones.¹⁵ While it raises a number of technical issues, AirTouch Paging's proposal addresses many of the policy concerns raised in implementing the Commission's payphone compensation scheme. PCIA has advocated a caller pays option—such as the AirTouch Paging proposal—within the carrier pays framework and therefore urges the Commission to consider the AirTouch Paging proposal as an integral part of this proceeding.¹⁶

Because the AirTouch Paging proposal was originally suggested in this proceeding and was the subject of comment in this docket,¹⁷ the Commission could adopt it without further notice and comment. Nevertheless, to ensure full and proper consideration of the proposal, the Commission should issue a further notice of proposed rulemaking at the same time it issues a report and order responding to the Court's second remand.

¹⁵ See AirTouch Paging Petition for Rulemaking to Establish a Dedicated 8XX Code for Toll-Free Calls Placed from Payphones, RM-9273 (Apr. 17, 1998).

¹⁶ See PCIA Second Remand Comments, CC Docket No. 96-128, at 4 n.10 and 7-13 (July 13, 1998).

¹⁷ See, e.g., Comments of AirTouch Paging, CC Docket No. 96-128, at 4 n.10 (Aug. 26, 1997); Reply Comments of AirTouch Paging, CC Docket No. 96-128, at 6-7 (Sept. 9, 1997).

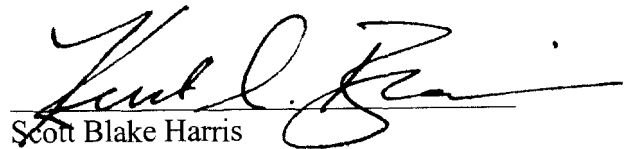
CONCLUSION

For the reasons set forth above and in PCIA's initial comments in this second remand proceeding, the Commission should modify its system of payphone compensation to comport with the court's mandate in *MCI Telecommunications Corp. v. FCC*.

Respectfully submitted,

PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION

Robert L. Hoggarth
Senior Vice President, Paging & Messaging
PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION
500 Montgomery Street, Suite 700
Alexandria, Virginia 22314-1561
(703) 739-0300


Scott Blake Harris
Kent D. Bressie
HARRIS, WILTSHIRE & GRANNIS LLP
1200 Eighteenth Street, N.W., Suite 1200
Washington, D.C. 20036-2560
(202) 730-1300

Its Attorneys

Dated: July 27, 1998

CERTIFICATE OF SERVICE

I, Kent D. Bressie, do hereby certify that a copy of the foregoing Reply Comments of the Personal Communications Industry Association has been sent by first-class mail, postage prepaid, on this 27th day of July, 1998, to the following:

Federal Communications
Commission

Larry Strickling
Deputy Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Federal Communications
Commission
(2 copies)

Dorothy Attwood
Chief, Enforcement Division
Common Carrier Bureau
Federal Communications Commission
2025 M Street, N.W., Room 6008
Washington, D.C. 20554

Federal Communications
Commission

Robert Spangler
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
2025 M Street, N.W.
Washington, D.C. 20554

Federal Communications
Commission

Greg Lipscomb
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
2025 M Street, N.W., Room 6336A
Washington, D.C. 20554

Federal Communications
Commission

Craig Stroup
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
2025 M Street, N.W.
Washington, D.C. 20554

International Transcription
Service

International Transcription Service
1231 20th Street, N.W.
Washington, D.C. 20036

AirTouch Paging

Carl W. Northrop
E. Ashton Johnston
Paul, Hastings, Janofsky, & Walker LLP
1299 Pennsylvania Avenue, N.W., 10th Floor
Washington, D.C. 20004-2400

AirTouch Paging

Mark A. Stachiw
Vice President & Senior Counsel
AirTouch Paging
12221 Merit Drive, Suite 800
Dallas, Texas 75251

Allen Lund & Company
L&M Transportation Services
Trans Dynamics, Inc.

Coley O'Brien
Coley O'Brien & Associates
One Massachusetts Avenue, N.W., Suite 840
Washington, D.C. 20001

American Public Communications
Council

Albert H. Kramer
Robert F. Aldrich
Dickstein, Shapiro, Morin & Oshinsky, L.L.P.
2101 L Street, N.W.
Washington, D.C. 20037-1526

America's Carriers
Telecommunications Association

Charles H. Helein
Helein & Associates, P.C.
8180 Greensboro Drive, Suite 700
McLean, Virginia 22102

AT&T Corporation

Mark C. Rosenblum
Richard H. Rubin
AT&T Corp.
295 North Maple Avenue, Room 3244J1
Basking Ridge, New Jersey 07920

Cable & Wireless, Inc.

Rachel J. Rothstein
Director, Regulatory & International Affairs
Cable & Wireless, Inc.
8219 Leesburg Pike
Vienna, Virginia 22182

Citicorp Services, Inc.	<p>Mark E. MacKenzie President Citicorp Services, Inc. 8430 W. Bryn Mawr Avenue Chicago, Illinois 60631</p>
Communications Central Inc.	<p>Barry E. Selvidge Vice President, Regulatory Affairs and General Counsel Communications Central Inc. 1150 Northmeadow Parkway, Suite 118 Roswell, Georgia 30076</p>
Competition Policy Institute	<p>Ronald Binz Debra Berlyn John Windhausen, Jr. Competition Policy Institute 1156 15th Street, N.W., Suite 310 Washington, D.C. 20005</p>
Competitive Telecommunications Association	<p>Danny E. Adams Steven A. Augustino Kelley, Drye & Warren, LLP 1200 19th Street, N.W., Suite 500 Washington, D.C. 20036</p>
Competitive Telecommunications Association	<p>Genevieve Morelli Executive Vice President and General Counsel Competitive Telecommunications Association 1900 M Street, N.W., Suite 800 Washington, D.C. 20036</p>
Consumer-Business Coalition for Fair Payphone 800 Fees	<p>Howard J. Symons Sara F. Seidman Yaron Dori Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C. 701 Pennsylvania Avenue, N.W. Washington, D.C. 20004-2608</p>
Consumer-Business Coalition for Fair Payphone 800 Fees	<p>Daniel R. Barney Robert Digges, Jr. ATA Litigation Center 2200 Mill Road Alexandria, Virginia 22314-4677</p>

Excel Communications, Inc.	Dana Frix Pamela S. Arluk Swidler & Berlin, Chartered 3000 K Street, N.W., Suite 300 Washington, D.C. 20007
Excel Communications, Inc.	James M. Smith Vice President – Law & Public Policy Excel Communications, Inc. 1133 Connecticut Avenue, N.W., Suite 750 Washington, D.C. 20036
Frontier Corporation	Michael J. Shortley III Frontier Corporation 180 South Clinton Avenue Rochester, New York 14646
General Communication, Inc.	Kathy L. Shobert Director, Federal Affairs General Communication, Inc. 901 15th Street, N.W., Suite 900 Washington, D.C. 20005
International Telecard Association	Glenn B. Manishin Michael D. Specht Blumenfeld & Cohen - Technology Law Group 1615 M Street, N.W., Suite 700 Washington, D.C. 20036
IXC Communications Services, Inc.	Gary L. Mann Assistant General Counsel – Regulatory Affairs IXC Communications Services, Inc. 1122 Capital of Texas Highway South Austin, Texas 78746
LCI International Telecommunications, Inc.	Brad E. Mutschelknaus Steven A. Augustino John J. Heitman Kelley Drye & Warren LLP 1200 Nineteenth Street, Suite 500 Washington, D.C. 20036

MCI Telecommunications Corp.	Leonard Sawicki Mary J. Sisak Mary L. Brown MCI Telecommunications Corp. 1801 Pennsylvania Avenue, N.W. Washington, D.C. 20006
MIDCOM Communications, Inc.	Laura H. Phillips Loretta J. Garcia Dow, Lohnes & Albertson, PLLC 1200 New Hampshire Avenue, N.W. Washington, D.C. 20036-6802
NATSO, Inc.	Lisa Mullings Associate Director, Government Affairs NATSO, Inc. P.O. Box 1285 Alexandria, Virginia 22313
New York State Department of Public Service	Lawrence G. Malone General Counsel New York State Department of Public Service Three Empire State Plaza Albany, New York 12223-1350
PageMart Wireless, Inc.	Phillip L. Spector Patrick Campbell Paul, Weiss, Rifkind, Wharton & Garrison 1615 L Street, N.W. Washington, D.C. 20036
Paging Network, Inc.	Judith St. Ledger-Roty Wendy I. Kirchick Kelley Drye & Warren LP 1200 19th Street, N.W., Suite 500 Washington, D.C. 20036
Peoples Telephone Company, Inc.	Eric L. Bernthal Michael S. Wroblewski Latham & Watkins 1001 Pennsylvania Ave., N.W., Suite 1300 Washington, D.C. 20004

Pocket Science, Inc.

Neil M. Peretz
Chief Executive Officer
Pocket Science, Inc.
2075 de la Cruz Boulevard, Suite 200
Santa Clara, California 95050

RBOC/GTE/SNET
Payphone Coalition

Michael K. Kellogg
Aaron Panner
Kellogg, Huber, Hansen, Todd & Evans
1301 K Street, N.W., Suite 1000 West
Washington, D.C. 20005

RCN Telecom Services, Inc.

Dana Frix
William B. Wilhelm, Jr.
Swidler & Berlin, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

Rhode Island Department of
Human Services

Ronald A. Lebel
Associate Director
Rhode Island Department of Human Services
Louis Pasteur Building
600 New London Avenue
Cranston, Rhode Island 02920

SkyTel Communications, Inc.

Thomas Gutierrez
J. Justin McClure
Lukas, Nace, Gutierrez & Sachs
1111 19th Street, N.W., Suite 1200
Washington, D.C. 20036

Sprint Corporation

Leon M. Kestenbaum
Jay C. Keithley
H. Richard Juhnke
Sprint Corporation
1850 M Street, N.W., 11th Floor
Washington, D.C. 20036

Telaleasing Enterprises Inc.

Theodore C. Rammelkamp
General Counsel
Telaleasing Enterprises, Inc.
601 West Morgan Street
Jacksonville, Illinois 62650

Telecommunications Resellers
Association

Charles C. Hunter
Catharine M. Hannan
Hunter Communications Law Group
1620 Eye Street, N.W., Suite 701
Washington, D.C. 20006

Teleport Communications
Group, Inc.

Teresa Marrero
Senior Regulatory Counsel - Federal
Teleport Communications Group, Inc.
Two Teleport Drive, Suite 300
Staten Island, New York 10301

TS Interactive, Inc.

Stu Sleppin
President
TS Interactive, Inc.
226 East 54th Street, Suite 206
New York, New York 10022

United States Telephone
Association

Linda Kent
Keith Townsend
Hance Haney
United States Telephone Association
1401 H Street, N.W., Suite 600
Washington, D.C. 20005

Vocall Communications Corp.
Galaxy Long Distance

Thomas K. Crowe
Law Offices of Thomas K. Crowe
2300 M Street, N.W., Suite 800
Washington, D.C. 20037

WorldCom, Inc.

Richard S. Whitt
WorldCom, Inc.
1120 Connecticut Avenue, N.W., Suite 400
Washington, D.C. 20036

WorldCom, Inc.

Douglas F. Brent
WorldCom, Inc.
101 Bullitt Lane, Suite 101
Louisville, Kentucky 40222

